UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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EPB-0778
NJK-6122

Attorneys for the Plaintiff:
Tristar Products, Inc.

TRISTAR PRODUCTS, INC. **(a Pennsylvania corporation),** Plaintiff, v. **E. MISHAN AND SONS INC.** **(a New York corporation)** Defendant.	**CIVIL ACTION FILE NUMBER:** *Document filed Electronically*

COMPLAINT FOR PATENT INFRINGMENT AND DEMAND FOR JURY TRIAL

Plaintiff, Tristar Products, Inc., a Pennsylvania corporation (hereinafter "Tristar Products" or "Plaintiff"), by its undersigned attorneys, for its Complaint against E. Mishan and Sons Inc., a New York corporation, (hereinafter "EMSON" or "Defendant"), upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters, alleges as follows:

THE PARTIES

1. Plaintiff Tristar Products is a Pennsylvania corporation having its corporate headquarters at 492 Route 46 East, Fairfield, New Jersey 07004.

2. Upon information and belief, Defendant EMSON is a New York corporation having its corporate headquarters at 230 Fifth Avenue, Suite 800, New York, New York 10001.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and for trade dress infringement arising under the Lanham Act, Title 15 of the United States Code. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C § 1331 and 28 U.S.C. §1338(a), as it involves substantial claims arising under the Patent Laws of the United States together with related claims for patent infringement and unfair competition. The Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

4. Upon information and belief, personal jurisdiction is proper in this Court as EMSON solicits business and conducts business within the State of New Jersey, including but not limited to sales through multiple retailers in New Jersey and maintaining a website with access in New Jersey, marketing to customers in the State of New Jersey, and having commercial and residential sales in the State of New Jersey through its website and its authorized retailers. A copy of printouts from the website www.emsoninc.com depicting a web-based offer for sale (attached as Exhibit A) demonstrate that EMSON's products are marketed to customers within the state of New Jersey. Therefore the Court has personal jurisdiction over EMSON pursuant to N.J. Ct. R. 4:4-4 and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), 28 U.S.C. §1391(c), and 28 U.S.C. §1400(b).

BACKGROUND

5. On February 14, 2017, U.S. Patent No. D778,664 (the "'664 patent") entitled "Pan" duly and legally issued to Keith Mirchandani and Mo-Tsan Tsai. The '664 patent was assigned to Tristar Products and KE M.O. House Co., Ltd. on May 23, 2016 by Mo-Tsan Tsai and June 20, 2016 by Keith Mirchandani. The assignment was duly recorded with the United States Trademark and Patent Office on December 21, 2016. Tristar Products maintains the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the '664 patent. A true and correct copy of the '664 patent is attached hereto as Exhibit B.

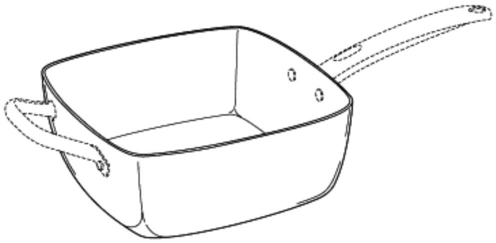
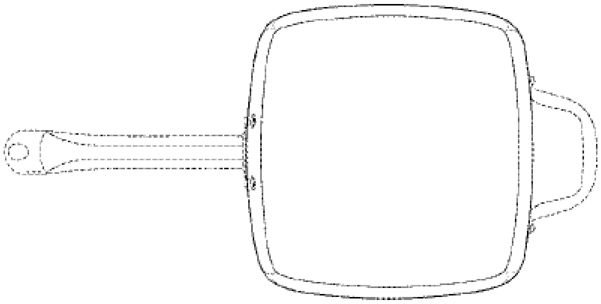
6. On February 7, 2017, U.S. Patent No. D778,103 (the "'103 patent") entitled "Pan" duly and legally issued to Keith Mirchandani and Mo-Tsan Tsai. The '103 patent was assigned to Tristar Products and KE M.O. House Co., Ltd. on May 23, 2016 by Mo-Tsan Tsai and June 20, 2016 by Keith Mirchandani. The assignment was duly recorded with the United States Trademark and Patent Office on December 19, 2016. Tristar Products maintains the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the '103 patent. A true and correct copy of the '103 patent is attached hereto as Exhibit C.

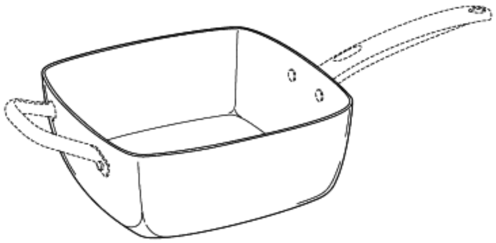
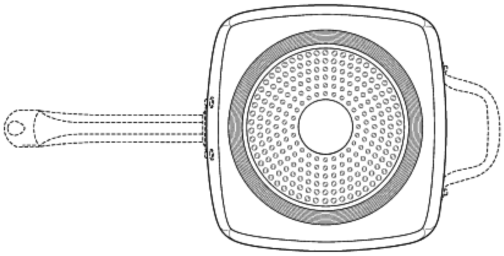
7. The '664 patent and the '103 patent each protects the design of a pan for use in cooking. Tristar utilizes the designs that are protected by the '664 patent and the '103 patent in its highly successful "COPPER CHEF" square pan. The COPPER CHEF pan has been the subject of extensive promotion and has attained immense success in the marketplace.

8. Upon information and belief, EMSON makes, uses, sells, and/or offers to sell and induces others to make, use, sell, and/or offer to sell, pans that embody and/or use the inventions

claimed in the '664 patent and the '103 patent, including at least under the brand name "GOTHAM STEEL."

9. A side-by-side comparison of the products reveals the infringing nature of the EMSON GOTHAM STEEL product:

Design of '664 Patent	**EMSON "GOTHAM STEEL" Product**
	
	

Design of '103 Patent	**EMSON "GOTHAM STEEL" Product**
	
	

10. At least as early as June 2016, Tristar Products introduced the COPPER CHEF pan. The COPPER CHEF is pictured below:

11. All the features that make up the COPPER CHEF trade dress are nonfunctional, in that they serve a decorative and aesthetic purpose and are not necessary to exist in this design in order for the COPPER CHEF to be used for its intended purpose. The nonfunctionality of the COPPER CHEF trade dress is further demonstrated by evidence in the marketplace of countless cookware items with completely different designs than the COPPER CHEF trade dress.

12. Tristar Products has heavily advertised and promoted the COPPER CHEF trade dress. As a result of these efforts, the public recognizes and understands the design of the COPPER CHEF to distinguish and identify the product. The COPPER CHEF has acquired a respected reputation and has been the recipient of press coverage. Therefore, the COPPER CHEF trade dress has acquired secondary meaning.

13. Defendant's GOTHAM STEEL pan copies the look and feel of the COPPER CHEF trade dress and is confusingly similar to the COPPER CHEF trade dress.

14. On information and belief, Defendant knew of the COPPER CHEF trade dress prior to the first promotion and sale of the GOTHAM STEEL pan.

15. Defendant purposefully adopted an appearance for its competing GOTHAM STEEL pan with the intent to trade upon the goodwill earned by Plaintiff.

16. Upon information and belief, as a result of Defendant's trade dress infringement, consumers are likely to be confused.

COUNT I

INFRINGEMENT OF THE '664 PATENT BY DEFENDANTS

17. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 16 herein.

18. Upon information and belief, Defendant directly infringes, infringes under the doctrine of equivalents, contributorily infringes, and/or actively induces infringement of one or more claims of the '664 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell pans that embody or use the ornamental design claimed in the '664 patent. Such infringing pans include at least the GOTHAM STEEL square pan depicted in Paragraph 9, above.

19. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendant's GOTHAM STEEL square pan to be substantially the same as Plaintiff's patented design.

20. Defendants' acts of infringement of the '664 patent have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation pursuant to 35 U.S.C. § 284.

21. Defendant's acts of infringement of the '664 patent have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

22. Defendants' acts of infringement of the '664 patent have caused and will continue to cause Tristar Products irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

23. Defendant's adoption and use of a colorable imitation of Plaintiff's patented design has caused and is causing substantial irreparable harm to Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

24. This case is exceptional and, therefore Tristar Products is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

25. Upon information and belief, EMSON's commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States pans that embody the ornamental design protected by the '664 patent have continued and are continuing with knowledge of the '664 patent, in spite of the fact that EMSON's actions constitute infringement of the '664 patent. These commercial activities are, at a minimum, in reckless disregard of Tristar Products' rights under the '664 patent. Such acts of infringement have therefore been intentional, deliberate and willful. Defendant's acts constitute violations of 35 U.S.C. § 271.

COUNT II

INFRINGEMENT OF THE '103 PATENT BY DEFENDANTS

26. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 25 herein.

27. Upon information and belief, Defendant directly infringes, infringes under the doctrine of equivalents, contributorily infringes, and/or actively induces infringement of the '103 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell pans that embody or use the ornamental design claimed in the '103 patent. Such infringing pans include at least the GOTHAM STEEL square pan depicted in Paragraph 9, above.

28. Defendant's acts of infringement of the '103 patent have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation pursuant to 35 U.S.C. § 284.

29. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendant's GOTHAM STEEL square pan to be substantially the same as Plaintiff's patented design.

30. Defendant's acts of infringement of the '103 patent have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

31. Defendant's acts of infringement of the '103 patent have caused and will continue to cause Tristar Products irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

32. Defendant's adoption and use of a colorable imitation of Plaintiff's patented design has caused and is causing substantial irreparable harm to Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

33. This case is exceptional and, therefore Tristar Products is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

34. Upon information and belief, EMSON's commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States pans that embody the ornamental design protected by the '103 patent have continued and are continuing with knowledge of the '103 patent, in spite of the fact that EMSON's actions constitute infringement of the '103 patent. These commercial activities are, at a minimum, in reckless disregard of Tristar Products' rights under the '103 patent. Such acts of infringement have therefore been intentional, deliberate and willful. Defendant's acts constitute violations of 35 U.S.C. § 271.

COUNT III

FEDERAL TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION BY DEFENDANT

35. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 34 herein.

36. This claim arises under Section 43(a) of the Lanham Act, 15. U.S.C. § 1125(a).

37. Upon information and belief, Defendant's unauthorized use in interstate commerce of Plaintiff's trade dress has caused and is likely to cause confusion, mistake or deception as to the (a) characteristics, qualities or origin of the GOTHAM STEEL pan, (b) an affiliation, connection or association between Plaintiff and Defendant, and/or (c) sponsorship or approval of the GOTHAM STEEL pan by Plaintiff.

38. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics or qualities of Defendant's GOTHAM STEEL pan.

39. Upon information and belief, Defendant has intentionally adopted and used trade dress that is substantially the same as Plaintiff's trade dress for Defendant's GOTHAM STEEL pan so as to profit from Plaintiff's reputation by confusing the public as to the source, origin, sponsorship or approval of Defendant's GOTHAM STEEL pan, with the intent of deceiving and misleading the public, and to wrongfully trading on the goodwill and reputation of Plaintiff.

40. Defendant's acts of infringement of Plaintiff's trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

41. Defendant's acts of infringement of Plaintiff's trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

42. Defendant's conduct has caused and will continue to cause substantial and irreparable harm to Plaintiff unless such actions are enjoined by this Court pursuant to 15 U.S.C. § 1116(a).

COUNT IV

COMMON LAW UNFAIR COMPETITION BY DEFENDANT

43. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 42 herein.

44. This claim arises under New Jersey common law.

45. Defendant has acted unfairly through its unauthorized use of Plaintiff's trade dress has and will mislead and deceive consumers as to the identity and source of the GOTHAM STEEL product.

46. Defendant's unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

47. Defendant's unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

48. Defendant's conduct has caused and will continue to cause substantial and irreparable harm to Plaintiff unless such actions are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Tristar Products prays that the Court enter judgment against Defendant, E. Mishan and Sons Inc., as follows:

A. That Defendant has infringed and is infringing the '664 Patent;

B. That Defendant has infringed and is infringing the '103 Patent;

C. That Defendant has infringed and is infringing Plaintiff's trade dress;

D. That Defendant has engaged in unfair competition;

E. That Defendant and its officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the ‘664 Patent;

F. That Defendant and its officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the ‘103 Patent;

G. That Defendant and its officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of trade dress infringement;

H. That Defendant and its officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of unfair competition;

I. That Defendant be ordered to pay Tristar Products damages sufficient to compensate for said Defendant's infringement of the ‘664 Patent, with pre-judgment and post-judgment interest, including profits lost as a result of infringement of the ‘664 Patent, and enhancing such damages due to the willfulness of the infringement, in accordance with 35 U.S.C. §284;

J. That Defendant be ordered to pay Tristar Products damages sufficient to compensate for said Defendant's infringement of the ‘103 Patent, with pre-judgment and post-judgment interest, including profits lost as a result of infringement of the ‘103 Patent, and enhancing such damages due to the willfulness of the infringement, in accordance with 35 U.S.C. §284;

K. That Defendant be ordered to pay Tristar Products damages sufficient to compensate for said Defendant's infringement of Plaintiff's trade dress, with pre-judgment and post-judgment interest;

L. That Defendant be ordered to pay Tristar Products damages sufficient to compensate for said Defendant's unfair competition, with pre-judgment and post-judgment interest;

M. That this action be declared as exceptional under 35 U.S.C. § 285 and that Tristar Products be awarded its attorneys' fees, costs, and expenses; and

N. That Tristar Products be awarded such other and further relief as this Court deems proper and just.

DEMAND FOR JURY TRIAL

Tristar Products demands a trial by jury of all issues properly triable to a jury in this case.

Respectfully submitted this 21st day of February 2017,

Bakos & Kritzer

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Attorneys for the Plaintiff:
Tristar Products, Inc.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Tristar Products, by its undersigned counsel, hereby certifies pursuant to Local Civil Rule 11.2 that the matter in controversy in the present action is the subject of district court case styled *Tristar Products, Inc. v. Telebrands Corp. et al.*, Civil Action No. TBD, filed on February 21, 2017 in the United States District Court for the District of New Jersey.

Respectfully submitted this 21st day of February 2017,

Bakos & Kritzer

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Attorneys for the Plaintiff:
Tristar Products, Inc.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1

Tristar Products, by its undersigned counsel, hereby certifies pursuant to Local Civil Rule 201.1 that, in addition to monetary damages greater than $150,000, Plaintiff seeks injunctive relief, and therefore this action is not appropriate for compulsory arbitration.

Respectfully submitted this 21st day of February 2017,

Bakos & Kritzer

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